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**United States District Court
District of Puerto Rico (San Juan)
CIVIL DOCKET FOR CASE #: 3:08-cv-02388-JAF**

Creation Upgrades, Inc. v. United States Department of Defense et al	Date Filed: 12/17/2008
Assigned to: Judge Jose A Fuste	Date Terminated: 09/25/2009
Cause: 05:552 Freedom of Information Act	Jury Demand: None
	Nature of Suit: 895 Freedom of Information Act
	Jurisdiction: U.S. Government Defendant

Plaintiff

Creation Upgrades, Inc.

represented by **David Efron**
David Efron Law Offices
PO Box 29314
San Juan, PR 00929-0314
787-753-6455
Fax: 787-758-5515
Email: efron@davidefronlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

United States Department of Defense

represented by **Isabel Munoz-Acosta**
United States Attorneys Office
District of Puerto Rico
Torre Chardon Suite 1201
350 Chardon Ave
San Juan, PR 00918
787-766-5656
Fax: 787-766-6219
Email: isabel.munoz@usdoj.gov
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

United States Department of the Navy

represented by **Isabel Munoz-Acosta**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**Department of the Navy Base
Realignment and Closure Program
Management Office**

represented by **Isabel Munoz-Acosta**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Portal del Futuro
TERMINATED: 02/11/2009

represented by **Gustavo A. Gelpi**
McConnell Valdes
P.O. Box 364225
San Juan, PR 00936-4225
787-250-5605
Fax: 787-250-5185
Email: gag@mcvpr.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/17/2008	1	COMPLAINT against all defendants (Filing fee \$ 350 receipt number 01040000000001341812.), filed by Creation Upgrades, Inc.. (Attachments: # 1 Exhibit 1-Bid, # 2 Exhibit 2-May 13, 2008 letter, # 3 Exhibit 3-FOIA Request, # 4 Exhibit 4-June 23, 2008 letter, # 5 Exhibit 5-July 7, 2008 letter, # 6 Exhibit 6- Invitation for Bids, # 7 Civil Cover Sheet, # 8 Category Sheet, # 9 Current Address Notice, # 10 Summons-Dept of Defense, # 11 Summons-Dept of the Navy, # 12 Summons-Portal del Futuro, # 13 Summons-U.S. Attorney, # 14 Summons-U.S. Attorney General)(Efron, David) (Entered: 12/17/2008)
12/18/2008	2	NOTICE OF JUDGE ASSIGNMENT Case has been assigned to Judge Gustavo A. Gelpi (jla) (Entered: 12/18/2008)

12/18/2008	3	Summons Issued as to United States Department of Defense, United States Department of the Navy, Portal del Futuro, U.S. District Attorney and U.S. Attorney General. Service due by 4/20/2009. (jla) (Entered: 12/18/2008)
12/19/2008	4	**AMENDED** Summons Issued as to United States Department of Defense, United States Department of the Navy, Portal del Futuro, U.S. District Attorney and U.S. Attorney General. Service due by 4/21/2009. (jla) (Entered: 12/19/2008)
12/31/2008	5	SUMMONS Returned Executed by all plaintiffs upon Portal del Futuro served on 12/22/2008, answer due 1/12/2009. (Efron, David) (Entered: 12/31/2008)
01/12/2009	6	SUMMONS Returned Executed by all plaintiffs upon United States Department of Defense served on 12/22/2008, answer due 1/12/2009. (Attachments: # 1 Supplement U.S. Attorney for the District of P.R. Notice) (Efron, David) (Entered: 01/12/2009)
01/15/2009	7	SUMMONS Returned Executed by Creation Upgrades, Inc. upon United States Department of Defense served on 12/22/2008, answer due 1/12/2009 (Attachments: # 1 Supplement U.S. Attorney General Civil Division U.S. Department of Justice) (Efron, David) Modified on 1/16/2009 to edit docket text (dv). (Entered: 01/15/2009)
01/20/2009	8	MOTION for Extension of Time until March 20, 2009 to File Answer (<i>or Plead</i>) re: 1 Complaint,, filed by Creation Upgrades, Inc. filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office Suggestions in opposition/response due by 2/5/2009 (Related document(s) 1) (Munoz-Acosta, Isabel) Modified on 1/21/2009 as to title (dv). (Entered: 01/20/2009)
01/20/2009	9	ORDER granting as requested 8 Motion for Extension of Time to Answer. Signed by Judge Gustavo A. Gelpi on 1/20/2009. (RS) (Entered: 01/20/2009)
01/21/2009	10	***SELECTED PARTIES*** INFORMATIVE Motion filed by Gustavo A. Gelpi on behalf of Portal del Futuro, Creation Upgrades, Inc. (Gelpi, Gustavo) (Entered: 01/21/2009)
01/21/2009	11	ORDER re 10 INFORMATIVE motion: Noted. Given attorney Gelpi's representations, the undersigned hereby DISQUALIFIES himself from presiding over this case. The same shall be randomly assigned to another US District Judge. With the exception of the granting of an extension of time to answer or otherwise plead to federal defendants (Docket No 9), the undersigned has not entered any rulings on motions in this case. Signed by Judge Gustavo A. Gelpi on 1/21/09. (CSL) (Entered: 01/21/2009)

01/21/2009	12	MEMORANDUM OF THE CLERK: Pursuant to the ORDER OF DISQUALIFICATION issued by Judge Gustavo A. Gelpi on 1/21/09, dkt. #11, this case has been randomly reassigned within the Case Assignment System to Chief Judge Jose A. Fuste. All future pleadings shall bear the following initials next to the case number: CV 08-2388 (JAF). Signed by Clerk on 1/21/09. (li,) (Entered: 01/21/2009)
01/21/2009	13	MOTION to Dismiss/Lack of Jurisdiction as to Creation Upgrades, Inc. filed by Gustavo A. Gelpi on behalf of Portal del Futuro Suggestions in opposition/response due by 2/6/2009 (Gelpi, Gustavo) (Entered: 01/21/2009)
01/23/2009	14	SUMMONS Returned Executed by Creation Upgrades, Inc. upon United States Department of the Navy served on 12/22/2008, answer due 1/12/2009. (Efron, David) (Entered: 01/23/2009)
02/02/2009	15	MOTION for extension of time until March 4, 2009 to oppose co-defendant Portal del Futuro's Motion for Dismissal Under Rule 12(b)(1) filed by David Efron on behalf of Creation Upgrades, Inc. Suggestions in opposition/response due by 2/18/2009 (Efron, David) (Entered: 02/02/2009)
02/05/2009	16	ORDER granting 15 Motion for extension of time, but only until February 27, 2009. Response to Motion Deadline due by 2/27/2009 . Signed by Chief Judge Jose A Fuste on 2/5/09. (mrj) (Entered: 02/05/2009)
02/05/2009	17	SCHEDULING ORDER/CASE MANAGEMENT ORDER: Amended Pleadings due by 2/23/2009. Joinder of Parties due by 2/23/2009. Discovery due by 6/8/2009. Dispositive Motions due by 7/8/2009. Proposed Pretrial Order due by 9/4/2009. Pretrial Conference set for 9/8/2009 01:30 PM in Courtroom 7 before Chief Judge Jose A Fuste . Signed by Chief Judge Jose A Fuste on 2/5/09.(mrj) (Entered: 02/05/2009)
02/09/2009	18	MOTION for Voluntary Dismissal <i>as to the action against co-defendant Portal del Futuro</i> by Creation Upgrades, Inc. (Efron, David) Modified on 2/10/2009 as to title (dv). (Entered: 02/09/2009)
02/10/2009	19	ORDER granting 18 Motion to Dismiss. Case dismissed as to Portal del Futuro with prejudice. Partial Judgment to enter accordingly. Signed by Chief Judge Jose A Fuste on 2/10/09. (mrj) (Entered: 02/10/2009)
02/10/2009	20	ORDER denied as moot 13 Motion to Dismiss for Lack of Jurisdiction. Signed by Chief Judge Jose A Fuste on 2/10/09. (mrj) (Entered: 02/10/2009)
02/11/2009	21	PARTIAL JUDGMENT. Case dismissed with prejudice as to Portal del Futuro. Signed by Clerk on 2/11/2009.(dv) (Entered: 02/11/2009)

03/17/2009	22	MOTION to dismiss <i>and Memorandum in Support of Motion to Dismiss</i> as to United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office Suggestions in opposition/response due by 4/2/2009 (Munoz-Acosta, Isabel) (Entered: 03/17/2009)
03/31/2009	23	RESPONSE in Opposition to Motion to Dismiss, <i>Memorandum in Support of Opposition and Motion for Compliance with FOIA Request</i> filed by all plaintiffs Re: 22 MOTION to dismiss <i>and Memorandum in Support of Motion to Dismiss</i> as to United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office filed by United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office filed by all plaintiffs. (Efron, David) (Entered: 03/31/2009)
04/03/2009	24	MOTION for Leave to File Document (<i>Motion for Leave to File Reply</i>) filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office Suggestions in opposition/response due by 4/20/2009 (Munoz-Acosta, Isabel) (Entered: 04/03/2009)
04/03/2009	25	REPLY to Response to Motion filed by United States Department of Defense, United States Department of the Navy Re: 22 MOTION to dismiss . (Munoz-Acosta, Isabel) Modified on 4/6/2009 as to filers, link and title (dv). (Entered: 04/03/2009)
04/06/2009	26	ORDER granting 24 Motion for Leave to File Reply, although filed prematurely. In the future, counsel shall refrain from electronically filing any document which should remain tendered until leave is secured from the court. Signed by Chief Judge Jose A Fuste on 4/6/09. (mrj) (Entered: 04/06/2009)
04/06/2009	27	MOTION for Leave to File Document - <i>Sur Reply</i> filed by David Efron on behalf of Creation Upgrades, Inc. Suggestions in opposition/response due by 4/22/2009 (Efron, David) (Entered: 04/06/2009)
04/08/2009	28	ORDER granting 27 Motion for Leave to File Surreply. Surreply Brief due by 4/15/2009 . Signed by Chief Judge Jose A Fuste on 4/8/08. (mrj) (Entered: 04/08/2009)
04/15/2009	29	SURREPLY to Reply to Opposition to <i>Motion to Dismiss</i> filed by Creation Upgrades, Inc. re: 22 Motion to Dismiss. (Efron, David) Modified on 4/16/2009 to create relationship (dv). (Entered: 04/15/2009)

04/30/2009	30	INFORMATIVE Motion re: taking of deposition filed by David Efron on behalf of Creation Upgrades, Inc. (Attachments: # 1 Exhibit Notice - Mrs. Kessler, # 2 Exhibit Notice - Mr. Hardy)(Efron, David) Modified on 5/1/2009 as to title (dv). (Entered: 04/30/2009)
05/01/2009	31	ORDER: 30 INFORMATIVE Motion filed by Creation Upgrades, Inc. Pursuant to Local Rule 26(a), attorneys shall not file discovery related documents unless otherwise ordered by the court. Any other pleading in violation of this local rule will be stricken from the record. Signed by Clerk on 5/1/2009.(dv) (Entered: 05/01/2009)
05/21/2009	32	MOTION for Protective Order filed by Isabel Munoz-Acosta on behalf of United States Department of Defense. Suggestions in opposition/response due by 6/8/2009 (Munoz-Acosta, Isabel) Modified on 5/22/2009 to remove filer (dv). (Entered: 05/21/2009)
05/22/2009	33	ORDER re 32 MOTION for Protective Order filed by United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office. Plaintiff to respond on or before June 1, 2009. The deposition will not be taken until the court decides the issue. Response to Motion Deadline due by 6/1/2009 . Signed by Chief Judge Jose A Fuste on 5/22/09.(mrj) (Entered: 05/22/2009)
05/22/2009	34	RESPONSE in Opposition to Motion <i>for Protective Order</i> filed by Creation Upgrades, Inc. Re: 32 MOTION for Protective Order filed by United States Department of Defense filed by Creation Upgrades, Inc.. (Efron, David) (Entered: 05/22/2009)
05/26/2009	35	ORDER granting in part 32 Motion for Protective Order. Deposition allowed on the only issue identified in Docket No. 34 , at page 2, item 4, and page 3, item 6. Signed by Chief Judge Jose A Fuste on 5/26/09. (mrj) (Entered: 05/26/2009)
06/10/2009	36	MOTION to dismiss <i>Pursuant to Rule 12(b)(6)</i> as to United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office Suggestions in opposition/response due by 6/26/2009 (Attachments: # 1 Exhibit I)(Munoz-Acosta, Isabel) (Entered: 06/10/2009)
06/22/2009	37	MOTION for extension of time until June 25, 2009 to oppose defendants' motion to dismiss filed by David Efron on behalf of Creation Upgrades, Inc. Suggestions in opposition/response due by 7/8/2009 (Efron, David) (Entered: 06/22/2009)

06/23/2009	38	ORDER granting 37 Motion for extension of time. Response to Motion Deadline due by 6/25/2009 . Signed by Chief Judge Jose A Fuste on 6/23/09. (mrj) (Entered: 06/23/2009)
06/25/2009	39	RESPONSE in Opposition to Motion <i>to Dismiss</i> filed by all plaintiffs Re: 36 MOTION to dismiss <i>Pursuant to Rule 12(b)(6)</i> as to United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office. (Attachments: # 1 Exhibit I-FOIA, # 2 Exhibit II-Letter, # 3 Exhibit III-Letter, # 4 Exhibit IV-IFB Award Plan) (Efron, David) Modified on 6/26/2009 to delete repetitive text (dv). (Entered: 06/25/2009)
06/29/2009	40	MOTION for Leave to File Document (<i>Motion for Leave</i>) filed by Isabel Munoz-Acosta on behalf of United States Department of Defense Suggestions in opposition/response due by 7/15/2009 (Munoz-Acosta, Isabel) (Entered: 06/29/2009)
06/30/2009	41	ORDER granting 40 Motion for Leave to File. Reply Brief due by 7/17/2009 . Signed by Chief Judge Jose A Fuste on 6/30/09. (mrj) (Entered: 06/30/2009)
07/17/2009	42	REPLY to Response to Motion filed by United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office Re: 36 MOTION to dismiss Pursuant to Rule 12(b)(6) . (Munoz-Acosta, Isabel) Modified on 7/20/2009 to correct relationship (dv). (Entered: 07/17/2009)
07/17/2009	43	MOTION to Stay <i>Deposition of Kimberly Kessler</i> (Suggestions in opposition/response due by 8/3/2009), MOTION requesting Order filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office (Munoz-Acosta, Isabel) (Entered: 07/17/2009)
07/20/2009	44	ORDER re 43 MOTION to Stay Deposition of Kimberly Kessler. Plaintiff to respond immediately . Signed by Chief Judge Jose A Fuste on 7/20/09.(mrj) (Entered: 07/20/2009)
07/21/2009	45	RESPONSE in Opposition to Motion <i>Requesting that the Deposition of Kimberly Kessler be Stayed</i> filed by Creation Upgrades, Inc. Re: 44 Order, 43 MOTION to Stay <i>Deposition of Kimberly Kessler</i> MOTION requesting Order filed by United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office filed by Creation Upgrades, Inc.. (Efron, David) (Entered: 07/21/2009)

07/21/2009	46	ORDER re 43 MOTION to Stay Deposition of Kimberly Kessler, 45 Response in Opposition to Motion. The deposition set for July 30, 2009, in California, will not be taken. However, the government will certify, under penalty of perjury, that the documentation turned over in lieu of deposition testimony is complete. Signed by Chief Judge Jose A Fuste on 7/21/09.(mrj) (Entered: 07/21/2009)
07/24/2009	47	Motion In Compliance with Court Order Docket No. 46 filed by Isabel Munoz-Acosta on behalf of United States Department of Defense (Attachments: # 1 Attachment - Statement)(Munoz-Acosta, Isabel) Modified on 7/27/2009 as to title (mim). (Entered: 07/24/2009)
07/29/2009	48	RESPONSE in Opposition to Motion in Compliance with Court Order filed by Creation Upgrades, Inc. Re: 47 Motion In Compliance with Court Order filed by United States Department of Defense filed by Creation Upgrades, Inc.. (Attachments: # 1 Exhibit I-Letter)(Efron, David) (Entered: 07/29/2009)
08/04/2009	49	ORDER noted 47 Motion In Compliance; noted 48 Response in Opposition. A complete copy of the document, without erasures, blackouts, etc., will be made available within forty-eight (48) hours . Signed by Chief Judge Jose A Fuste on 8/4/09. (mrj) (Entered: 08/04/2009)
08/06/2009	50	Motion In Compliance, MOTION Submitting IFB Award Plan re: 49 Order on Motion In Compliance, filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy (Attachments: # 1 IFB Award Plan)(Related document(s) 49) (Munoz-Acosta, Isabel) (Entered: 08/06/2009)
08/17/2009	51	ORDER noted 50 Motion In Compliance, MOTION Submitting IFB Award Plan re: 49 Order on Motion In Compliance. Signed by Chief Judge Jose A Fuste on 8/17/09. (ft) (Entered: 08/17/2009)
08/20/2009	52	AMENDED COMPLAINT against all defendants, filed by Creation Upgrades, Inc.. (Attachments: # 1 Exhibit 1-Bid, # 2 Exhibit 2-Excerpt of deposition, # 3 Exhibit 3-FOIA request)(Efron, David) (Entered: 08/20/2009)
08/20/2009	53	MOTION for extension of time until September 4, 2009 to file Motion in Opposition to Amended Complaint filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office Suggestions in opposition/response due by 9/8/2009 (Munoz-Acosta, Isabel) (Entered: 08/20/2009)

08/27/2009	54	MOTION to dismiss <i>Amended Complaint and Memorandum in Support of Motion to Dismiss</i> as to United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office Suggestions in opposition/response due by 9/14/2009 (Munoz-Acosta, Isabel) (Entered: 08/27/2009)
08/28/2009	55	MOTION to Continue <i>Pretrial</i> filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office (Munoz-Acosta, Isabel) (Entered: 08/28/2009)
08/28/2009	56	RESPONSE in Opposition to Motion <i>Requesting Continuance of Pretrial</i> filed by Creation Upgrades, Inc. Re: 55 MOTION to Continue <i>Pretrial</i> filed by United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office filed by Creation Upgrades, Inc.. (Efron, David) (Entered: 08/28/2009)
08/31/2009	57	ORDER granting 53 Motion for extension of time. Response to Motion Deadline due by 9/4/2009 . Signed by Chief Judge Jose A Fuste on 8/31/09. (mrj) (Entered: 08/31/2009)
09/01/2009	58	***FILED IN ERROR - SEE DKT. # 59 *** MOTION to Clarify filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office (Munoz-Acosta, Isabel) Modified on 9/2/2009 (dv). (Entered: 09/01/2009)
09/01/2009	59	MOTION to Clarify filed by Isabel Munoz-Acosta on behalf of United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office (Munoz-Acosta, Isabel) Modified on 9/2/2009 as to title (dv). (Entered: 09/01/2009)
09/01/2009	60	ORDER granting 55 Motion to Continue Pretrial Conference. A Status Conference will be held instead. Status Conference set for 9/8/2009 01:30 PM in Courtroom 7 before Chief Judge Jose A Fuste . Signed by Chief Judge Jose A Fuste on 9/1/09. (mrj) (Entered: 09/01/2009)
09/01/2009		NOTICE of Docket Text Modification by Deputy Clerk re: 58 MOTION to Clarify ***FILED IN ERROR-FOR CORRECTED ENTRY SEE DKT. # 59 .*** (dv) (Entered: 09/02/2009)

09/02/2009	61	ORDER noted 59 Motion to clarify. Signed by Chief Judge Jose A Fuste on 9/2/09. (mrj) (Entered: 09/02/2009)
09/08/2009	62	RESPONSE in Opposition to Motion <i>to Dismiss</i> filed by Creation Upgrades, Inc. Re: 54 MOTION to dismiss <i>Amended Complaint and Memorandum in Support of Motion to Dismiss</i> . (Efron, David) Modified on 9/9/2009 to delete repetitive text (dv). (Entered: 09/08/2009)
09/08/2009	63	Minute Entry for proceedings held before Chief Judge Jose A Fuste: Status Conference held on 9/8/2009. Parties informed as to the status of the case. Issue of jurisdiction to be decided by the Court. (Court Reporter Amy Walker.)(Present: Attys. David Efron and Hatuey Infante on behalf of Plaintiff and AUSA: Isabel Munoz on behalf of Defendants). (ft) (Entered: 09/08/2009)
09/25/2009	64	OPINION AND ORDER GRANTING 54 MOTION to dismiss Amended Complaint; 22 MOTION to dismiss; and 36 MOTION to dismiss filed by United States Department of Defense, United States Department of the Navy, Department of the Navy Base Realignment and Closure Program Management Office. We DISMISS Plaintiff's Freedom of Information Act claim for failure to state a claim upon which relief can be granted. We also DISMISS Plaintiff's breach of contract claim for lack of jurisdiction. Judgment shall enter accordingly. Signed by Chief Judge Jose A Fuste on 9/25/09.(mrj) (Entered: 09/25/2009)
09/25/2009	65	JUDGMENT is entered dismissing the present case in its entirety. Signed by Chief Judge Jose A Fuste on 9/25/2009.(dv) (Entered: 09/28/2009)

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